

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

FELIX DeJESUS,

Plaintiff,

-v-

9:04-CV-298

**OFFICER R. TIERNEY; BRANTLY;
OFFICER GRANSBURY; MANHARM
JULIE SUAREZ; FIELDER; MERCIS;
E. ROTH; THOMAS EAGEN; OFFICER
M. SCHUER; MAYFORTH; OFFICER,
F. PAMBIACHI; BROKE; JOHN DOE;
OFFICER K. SWEET; PEREZ; DIRIE;
GARY FILION; and DONALD SELSKY,**

Defendants.

APPEARANCES:

FELIX DeJESUS

Plaintiff *pro se*

HON. ELIOT SPITZER

Attorney General of the State of New York

STEPHEN KERWIN, Esq., Assistant Attorney General

The Capitol

Albany, New York 12224

Attorneys for DOCS Defendants

THUILLEZ, FORD, GOLD, JOHNSON & BUTLER, LLP

DEBRA J. YOUNG, Esq., of Counsel

20 Corporate Woods Boulevard , 6th Floor

Albany, New York 12211-1715

Attorneys for Medical Personnel Defendants

Hon. Norman A. Mordue, Chief Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff, an inmate in the custody of the New York State Department of Correctional Services ("DOCS"), brought this action for monetary relief under 42 U.S.C. § 1983, alleging that he was denied due process in connection with a disciplinary hearing held against him, that he was

denied proper medical care, and that one of the defendants used excessive force against him.

Presently before the court are two motions to dismiss this action pursuant to Fed. R. Civ. P. 12(b)(6), one on behalf the corrections personnel (Dkt. No. 63) and one on behalf of the medical personnel (Dkt. No. 66). The motions were referred to United States Magistrate Judge Gustave J. DiBianco for a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.3(c). Magistrate Judge DiBianco has submitted a Report and Recommendation (Dkt. No. 89) recommending that both motions be granted and the action dismissed in its entirety.

Plaintiff has submitted objections to the Report and Recommendation (Dkt. Nos. 90, 92). Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court conducts a *de novo* review of those parts of a magistrate judge's Report and Recommendation to which a party specifically objects. Where only general objections are filed, the Court reviews for clear error. *See Brown v. Peters*, 1997 WL 599355,*2-* 3 (N.D.N.Y.), *aff'd without op.*, 175 F.3d 1007 (2d Cir. 1999). Failure to object to any portion of a Report and Recommendation waives further judicial review of the matters therein. *See Roldan v. Racette*, 984 F.2d 85, 89 (2d Cir. 1993). Defendants have interposed no objections to the Report and Recommendation, nor do they submit papers in response to plaintiff's objections (Dkt. Nos. 91, 93).

Plaintiff's objections are best characterized as general objections; he interposes no specific objection to any portion of the Report and Recommendation. Thus, the proper standard of review is clear error. The Court finds no clear error. Even on *de novo* review, the Court determines that the Report and Recommendation of Magistrate Judge DiBianco is correct in all respects. In the objections plaintiff appears to be raising a discovery issue; however, it is not clear what information plaintiff is seeking, nor does it appear that the discovery to which he refers concerns

any incident which is the subject of this action. Nor does a search of the docket sheet and the documents submitted by plaintiff on these motions indicate that plaintiff previously sought such information. The objections do not make a showing on this issue sufficient to warrant reopening the briefing or rejecting the Report and Recommendation. It is therefore

ORDERED that the Report and Recommendation is accepted and adopted; and it is further

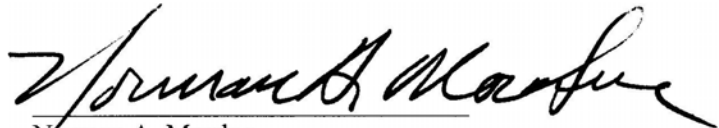
ORDERED that the motion to dismiss this action pursuant to Fed. R. Civ. P. 12(b)(6) on behalf the corrections personnel (Dkt. No. 63) is granted; and it is further

ORDERED that the motion to dismiss this action pursuant to Fed. R. Civ. P. 12(b)(6) on behalf the medical personnel (Dkt. No. 66) is granted; and it is further

ORDERED that the action is dismissed in its entirety.

IT IS SO ORDERED.

March 28, 2006
Syracuse, New York



Norman A. Mordue
Chief United States District Court Judge